

United States District Court  
Central District of California

RUBEN JUAREZ; and ISELA  
HERNANDEZ

Plaintiffs,

v.

PRECISION VALVE & AUTOMATION,  
INC., a corporation; and DOES 1–20,  
Defendants.

Case No. 2:17-cv-03342-ODW(GJS)

**ORDER GRANTING, IN PART, AND  
DENYING, IN PART,  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT [48]**

**I. INTRODUCTION**

Plaintiffs, Ruben Juarez (“Juarez”) and Isela Hernandez (“Hernandez”), alleged that Defendant Precision Valve & Automation, Inc. (“Defendant”) manufactured, designed, and sold a machine, the PVA 350, that caused Plaintiffs’ injuries. (First Am. Compl. (“FAC”) ¶ 4, ECF No. 32.) Specifically, Juarez worked at SpaceX and used the PVA 350 to spray chemicals on circuit boards. (FAC ¶ 14.) As a result of Juarez’s inhalation of the chemicals used in the PVA 350, Juarez developed, among other symptoms, severe headaches, nausea, shortness of breath, dizziness, memory loss, respiratory issues, and stomach pains, and has been unable to work since approximately May or June of 2014. (FAC ¶¶ 14, 18, 27, 30.) Plaintiffs also bring a

1 claim for loss of consortium for Hernandez’s loss of love, care, companionship,  
2 comfort, assistance, protection, society, and moral support. (FAC ¶¶ 48, 49.)

3 Currently before the Court is Defendant’s Motion for Summary Judgment.  
4 (Mot. for Summ. J. (“MSJ”), ECF No. 49.)<sup>1</sup> Defendant argues that California’s two-  
5 year statute of limitations bars Plaintiffs’ claims. Additionally, Defendant moves for  
6 partial summary judgment on Plaintiffs’ strict products liability failure to warn claim  
7 and on Plaintiffs’ strict products liability design defect claim. (MSJ 1–2.)

8 For the following reasons, the Court **GRANTS, IN PART, AND DENIES, IN**  
9 **PART**, Defendant’s Motion. (ECF No. 48.)<sup>2</sup>

## 10 **II. PRELIMINARY MATTERS**

11 In response to Defendant’s 32-page Statement of Uncontroverted Facts and  
12 Conclusions of Law (hereinafter, “DUF”) (ECF No. 50), Plaintiffs filed a 591-page  
13 Statement of Genuine Disputes of Material Facts (hereinafter, “PSMF”). (ECF  
14 No. 64.) Not only did Plaintiffs violate Central District of California, Local Rule 56-2  
15 requiring a “**concise** ‘Statement of Genuine Disputes,’” but in many instances, the  
16 material facts are not in dispute, and are instead the result of Plaintiffs’ counsel’s  
17 lackadaisical response to the Statement of Uncontroverted Facts and overuse of copy  
18 and paste. C.D. Cal. L.R. 56-2 (emphasis added). For example, consider  
19 uncontroverted fact number 16: “Juarez testified that when he worked at SpaceX he  
20 never look[ed] at this manual or asked to look at this manual for the PVA 350.” (DUF  
21 16.) In response, Plaintiffs curiously offer resistance: “Disputed to the extent  
22 Defendant infers that Mr. Juarez saw the manual as Mr. Juarez was never provided the  
23 manual.” The undisputed fact unambiguously states that Juarez never saw the manual,  
24 yet it is remarkable that Plaintiffs believe it suggests that Juarez saw the manual.

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25 <sup>1</sup> On September 17, 2018, PVA filed its Reply in support of the Motion for Summary Judgment.  
26 (Reply, ECF No. 69.) The Reply exceeds the page limit set forth in this Court’s local rules, Rule  
27 VII.A.3, which provides that “[r]eplies shall not exceed 12 pages.” Accordingly, this Court does not  
consider anything in the Reply beyond page 12.

28 <sup>2</sup> After considering the papers filed in connection with this Motion, the Court deemed this matter  
appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 Plaintiffs' 591-page Statement of Genuine Disputes of Material Facts is littered with  
2 the same repetitive statement that undisputed facts are disputed, when in fact, they are  
3 not. Plaintiffs' copy and paste job displays a lack of effort and a disregard for the  
4 Court. The same can be said of Plaintiffs' evidentiary objections in opposition to the  
5 motion for summary judgment. (ECF No. 65.) Plaintiffs are hoping that the Court  
6 will assume there are some material disputes of fact in the 591 pages. However, the  
7 Court "is not required to comb the record to find some reason to deny a motion for  
8 summary judgment." *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026,  
9 1029 (9th Cir. 2001) (internal quotation marks omitted); *see also Northwest Bank and*  
10 *Trust Co. v. First Illinois Nat'l Bank*, 354 F.3d 721, 725 (8th Cir. 2003) (affirming the  
11 district court's sanction that the defendant was deemed to have admitted all material  
12 facts due to the defendant's voluminous filings in violation of the local rules). Nor is  
13 it this Court's duty to find the needle in the haystack in a 591-page filing. *See Keenan*  
14 *v. Allan*, 91 F.3d 1275, 1278 (9th Cir. 1996).

15 The Court does not rely on most of the evidence under objection and thus many  
16 of the objections are largely moot. *See Smith v. Cty. of Humbolt*, 240 F. Supp. 2d  
17 1109, 1115-16 (N.D. Cal. 2003). To the extent that any other evidence is relied on in  
18 this Order without discussion of the objection, the relevant objections are overruled.  
19 *See Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1118, 1122 (E.D. Cal.  
20 2006) (concluding that "the court will [only] proceed with any necessary rulings on  
21 defendants' evidentiary objections"). Moreover, after reviewing Plaintiffs' 591-page  
22 Statement of Genuine Disputes of Facts and the evidence in support of the facts, the  
23 Court finds that the facts as recited below, and unless otherwise noted, are undisputed.

### 24 **III. FACTUAL BACKGROUND**

25 The PVA 350 is a conformal coating machine manufactured by Defendant.  
26 (DUF 3.) Defendant sold one PVA 350 to SpaceX in 2009. (DUF 4.) The machine  
27 coats printed circuit boards with a polymeric film that conforms to the board's  
28

1 contours to protect against moisture, dust, chemicals, and temperature extremes. (DUF  
2 5.)

3 The PVA 350 monitored the exhaust flow such that the machine would turn off  
4 if the exhaust system was not working. (DUF 7.) Additionally, if the door of the  
5 machine was opened, the spraying of materials will stop. (DUF 9–11.) The machine  
6 cannot be operated until a safety check is performed; specifically, the operator must  
7 enter the safety check and complete it successfully, otherwise, the machine halts all  
8 operation. (DUF 12.) The PVA 350's manual also warned users not to disable the  
9 safety features of the machine. (DUF 13.) However, PVA trained SpaceX employees  
10 on how to bypass these safety functions. (PSMF 11.)

11 Plaintiff Ruben Juarez worked as a programmer for SpaceX from January 2012  
12 to March 2014. (DUF 27.) Juarez's job was to program the PVA 350 to spray  
13 Arathane 5750A, Arathane 5750B, Arathane 5750 A/B, and Humiseal thinner. (DUF  
14 29, 30.) Juarez spent approximately 60% of his time inside the conformal coating  
15 room, which housed the machine. (DUF 31.) As part of Juarez's job, Juarez actually  
16 worked inside the machine to verify the thickness of the coatings sprayed on SpaceX's  
17 components. (DUF 32.)

18 Within two weeks of starting at SpaceX, while Juarez was programming the  
19 PVA 350, Juarez was exposed to the alleged toxic chemicals. (DUF 35.) Around  
20 August or September of 2012, Juarez began experiencing migraine headaches,  
21 dizziness, sinus symptoms, and difficulty walking. (DUF 36.) Starting in June 2012  
22 to approximately May 2018, Juarez was hospitalized nine times and had at least  
23 twenty-one visits to urgent care and/or the emergency room for symptoms associated  
24 with the chemical exposure. (DUF 37.)

25 In January 2013, Juarez was diagnosed with a brain aneurysm and underwent  
26 brain surgery. (DUF 47.) As a result, Juarez missed approximately 33.6 weeks of  
27 work in 2013 and has not worked since May or June of 2014. (PSMF 48.) Juarez  
28 filed a workers' compensation action on September 24, 2014. (DUF 49.) On Juarez's

1 workers' compensation form, Juarez claimed his injury occurred on "COMPANY  
2 PREMISES; DUE TO REPETITIVE AND CONTINUOUS EXPOSURE TO  
3 ELECTRONIC PARTS CLEANING & LEAD SO." (DUF 49; PSMF 49.)

4 On February 3, 2015, Juarez told neurologist Dr. Isaac Regev that "almost from  
5 the beginning [Juarez] noted frequent headaches at work which he felt was associated  
6 with various chemicals." (DUF 38.) During this same visit, Dr. Regev recommended  
7 that Juarez be "seen by a toxicologist with the" material safety data sheet ("MSDS")  
8 "and working environment analysis." (DUF 56.) On March 3, 2015, Juarez emailed  
9 SpaceX's human resources department to obtain copies of the MSDS for: "1.  
10 Arathane two part mix. 2. Thinner 521. 3. 63/67 Eutectic solder wire. 4. Humiseal  
11 1A33 conformal coating. 5. Isopropyl alcohol (IPA)." (DUF 57.) In March 2016,  
12 Juarez also made similar comments to psychologist Dr. Gayle K. Windman, which Dr.  
13 Windman documented: "A few months after he began working at SpaceX, Mr. Juarez  
14 developed symptoms of migraine headaches, dizziness, difficulty walking and sinus  
15 symptoms due to exposure to electronic materials such as tin and lead; chemical  
16 coatings such as Arathane and Humiseal; and cleaning substances such as thinners and  
17 isopropyl alcohol." (DUF 39.)

18 In Plaintiffs' initial complaint, Juarez alleged that he did not suspect "that the  
19 chemicals may have caused his injuries until March of 2015 when he, for the first  
20 time, received the MSDS of the chemicals." (DUF 61.) However, Plaintiff alleged in  
21 his First Amended Complaint that "[i]t was not until May of 2015, when Plaintiff  
22 Juarez saw the MSDS sheets from Space X . . . that he first suspected that the PVA  
23 350 might have caused his injuries." (DUF 60.)

24 On February 28, 2017, Plaintiffs filed their initial complaint, which was  
25 subsequently removed. (DUF 78.)

#### 26 IV. LEGAL STANDARD

27 A court "shall grant summary judgment if the movant shows that there is no  
28 genuine dispute as to any material fact and the movant is entitled to judgment as a

1 matter of law.” Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable  
2 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550  
3 U.S. 372, 378 (2007). A disputed fact is “material” where the resolution of that fact  
4 might affect the outcome of the suit under the governing law, and the dispute is  
5 “genuine” where “the evidence is such that a reasonable jury could return a verdict for  
6 the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).  
7 Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues  
8 of fact and defeat summary judgment. *Thornhill’s Publ’g Co. v. GTE Corp.*, 594 F.2d  
9 730, 738 (9th Cir. 1979). Moreover, though the Court may not weigh conflicting  
10 evidence or make credibility determinations, there must be more than a mere scintilla  
11 of contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*,  
12 198 F.3d 1130, 1134 (9th Cir. 2000).

13       Once the moving party satisfies its burden, the nonmoving party cannot simply  
14 rest on the pleadings or argue that any disagreement or “metaphysical doubt” about a  
15 material issue of fact precludes summary judgment. *See Celotex Corp. v. Catrett*, 477  
16 U.S. 317, 322–23 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475  
17 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics,*  
18 *Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). Nor will uncorroborated allegations and  
19 “self-serving testimony” create a genuine issue of material fact. *Villiarimo v. Aloha*  
20 *Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). The court should grant  
21 summary judgment against a party who fails to demonstrate facts sufficient to  
22 establish an element essential to his case when that party will ultimately bear the  
23 burden of proof at trial. *See Celotex*, 477 U.S. at 322.

24       Pursuant to the Local Rules, parties moving for summary judgment must file a  
25 proposed “Statement of Uncontroverted Facts and Conclusions of Law” that should  
26 set out the material facts to which the moving party contends there is no genuine  
27 dispute. C.D. Cal. L.R. 56-1. A party opposing the motion must file a “Statement of  
28 Genuine Disputes” setting forth all material facts as to which it contends there exists a

1 genuine dispute. C.D. Cal. L.R. 56-2. “[T]he Court may assume that material facts as  
2 claimed and adequately supported by the moving party are admitted to exist without  
3 controversy except to the extent that such material facts are (a) included in the  
4 ‘Statement of Genuine Disputes’ and (b) controverted by declaration or other written  
5 evidence files in opposition to the motion.” C.D. Cal. L.R. 56-3.

## 6 **V. DISCUSSION**

7 Defendant argues that summary judgment should be entered in its favor because  
8 California’s two-year statute of limitations bars Plaintiffs’ claims. (MSJ 11–22.)  
9 Alternatively, Defendant moves for partial summary judgment on Juarez’s strict  
10 products liability claims for failure to warn and design defect. (MSJ 22–25.) For the  
11 following reasons, the Court grants Defendant’s motion for partial summary judgment  
12 on the strict products liability claim for failure to warn, and otherwise denies  
13 Defendant’s motion for summary judgment on the remaining claims.

### 14 **A. Statute of Limitations**

15 Defendant moves for summary judgment pursuant to California Code of Civil  
16 Procedure (C.C.P.) sections 340.8 (exposure to hazardous/toxic substances) and 335.1  
17 (general liability for wrongful act or neglect). Under C.C.P. section 340.8, a plaintiff  
18 may commence a civil action for exposure to a hazardous material or toxic substance:

19 [N]o later than either two years from the date of injury, or two years  
20 after the plaintiff becomes aware of, or reasonably should become  
21 aware of, (1) an injury, (2) the physical cause of the injury, and (3)  
22 sufficient facts to put a reasonable person on inquiry notice that the  
23 injury was caused or contributed by the wrongful act of another,  
24 whichever occurs later.

25 Cal. Civ. Proc. Code § 340.8. Under C.C.P. section 335.1, an action for  
26 “injury to . . . an individual caused by the wrongful act or neglect of  
27 another” must be brought within two years.

1 The accrual of the statute of limitations is subject to California's delayed  
2 discovery rule. *Rosas v. BASF Corp.*, 236 Cal. App. 4th 1378, 1389 (2015) (stating  
3 that "[a]n important exception to the general rule of accrual is the discovery rule,  
4 which postpones accrual of a cause of action until the plaintiff discovers, or has reason  
5 to discover, the cause of action") (internal quotation marks omitted). Although the  
6 identity of a defendant "is not an essential element of a products liability cause of  
7 action . . . a plaintiff's ignorance of wrongdoing involving a product's defect will  
8 usually delay accrual because such wrongdoing is essential to that cause of action."  
9 *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 813 (2005) (holding that "if a  
10 plaintiff's reasonable and diligent investigation discloses only one kind of wrongdoing  
11 when the injury was actually caused by tortious conduct of a wholly different sort, the  
12 discovery rule postpones accrual of the statute of limitations on the newly discovered  
13 claim"). Summary judgment is not warranted "when the facts are susceptible of more  
14 than one reasonable inference, or the undisputed facts do not support a finding . . . that  
15 a reasonable person would suspect that an injury was wrongfully caused." *Rosas*, 236  
16 Cal. App. 4th at 1392.

17 Here, there are disputes of material fact as to whether Juarez acted reasonably  
18 and diligently in conducting his investigation in an attempt to discover the wrongful  
19 act causing his injury. Juarez started working at SpaceX in January 2012, and by  
20 August or September 2012, he began experiencing migraines, dizziness, sinus  
21 symptoms, and difficulty walking. (DUF 27, 36.) In January 2013, Juarez saw a  
22 doctor and was diagnosed with a brain aneurysm and had brain surgery the same  
23 month. (DUF 47.) As a result, Juarez missed over 30 weeks of work in 2013, and  
24 stopped working at SpaceX since May or June 2014. (DUF 48, 49.) On September  
25 24, 2014, believing that the cause of his headaches and aneurysm were "due to  
26 repetitive and continuous exposure to electronic parts cleaning & lead so [sic]" on  
27 company premises, Juarez filed a workers' compensation claim. (DUF 49, PSMF 49.)  
28 During the course of Juarez's workers' compensation claim, on February 3, 2015, he



1 saw Dr. Regev, who prompted him to obtain the MSDS and to make an appointment  
2 with a toxicologist. (PSMF 106.) On March 3, 2015, Juarez emailed SpaceX's  
3 human resources department to obtain copies of the MSDS for "1. Arathane two part  
4 mix. 2. Thinner 521. 3. 63/67 Eutectic solder wire. 4. Humiseal 1A33 conformal  
5 coating. 5. Isopropyl alcohol (IPA)." (DUF 57.) Viewing the evidence in the light  
6 most favorable to the nonmoving party, this email suggests that the MSDS was either  
7 not available to Juarez or that he was not aware that the MSDS was readily available  
8 to him. Additionally, even assuming that the MSDS was available, there is a material  
9 dispute of fact as to whether Juarez would have known to review them prior to Dr.  
10 Regev's suggestion.

11 Additionally, Juarez's filing of his workers' compensation claim is not  
12 definitive proof that he was aware that the PVA 350 was the cause of his injuries. In  
13 *Nelson v. Indevus Pharms, Inc.*, the court reversed the grant of summary judgment  
14 after concluding that the "plaintiff's common and nonspecific symptoms did not  
15 establish, as a matter of law, that she should have investigated the possibility that she  
16 had been harmed by the diet drug." 142 Cal. App. 4th 1202, 1210–12 (2006). Here,  
17 prior to Juarez's visit to Dr. Regev, Juarez appeared to only have common and  
18 nonspecific symptoms such as migraines, dizziness, sinus issues, and difficulty  
19 walking. Although Juarez was aware that something at work was causing his injuries,  
20 he did not know the cause, and filing the workers' compensation claim was part of  
21 Juarez's investigative efforts.

22 Defendant argues that the filing of a workers' compensation claim is sufficient  
23 to start the accrual of the statute of limitations. (MSJ 19.) Defendant maintains this  
24 position is supported by the holding in *Rivas v. Safety-Kleen Corp.*, 98 Cal App. 3th  
25 218 (2002). However, Defendant overstates the holding in *Rivas*. In *Rivas*, the  
26 plaintiff's doctors explicitly told the plaintiff to stay away from the solvent he was  
27 using at work, and it was this comment that should have triggered "a reasonable  
28 person's suspicion and lead to further investigation." *Id.* at 228. Here, Juarez's filing

1 of his workers' compensation claim did not indicate that he was even remotely aware  
2 that inhalation of chemicals such as Arathane and Humiseal caused his injuries. The  
3 workers' compensation claim form only indicates that the injury occurred on  
4 "company premises due to repetitive and continuous exposure to electronic parts  
5 cleaning & lead so." (DUF 49, PSMF 49.) It was through Juarez's filing of his  
6 workers' compensation claim and the ensuing doctor's visits that Juarez was made  
7 aware that these chemical exposures may have caused his injuries.

8 Accordingly, based on the record before the Court, there is a material dispute of  
9 fact regarding when Juarez reasonably should have become aware of the physical  
10 cause of his injury.

11 **B. Strict Product Liability – Failure to Warn**

12 Defendant moves for partial summary judgment on Plaintiffs' strict product  
13 liability claim for failure to warn on the basis that warnings were provided with the  
14 machine and that Plaintiffs' injuries were not caused by the failure to warn because  
15 Plaintiffs did not read the warnings.

16 A manufacturer may be strictly liable for failing to warn consumers associated  
17 with the reasonably foreseeable use of the product even if the product was flawlessly  
18 manufactured and designed. *Carlin v. Superior Court*, 13 Cal. 4th 1104, 1112 (1996)  
19 (stating that "rules of strict liability require a plaintiff to prove only that the defendant  
20 did not adequately warn of a particular risk that was known or knowable . . . available  
21 at the time of manufacture and distribution"); *Karlsson v. Ford Motor Co.*, 140 Cal.  
22 App. 4th 1202, 1208 (2006). In the case of strict liability, "the reasonableness of the  
23 defendant's failure to warn is immaterial." *Carlin*, 13 Cal. 4th at 1112.

24 Central District of California Local Rule 7-9 states that opposing papers shall  
25 "contain a statement of all the reasons in opposition thereto and the points and  
26 authorities upon which the opposing party will rely." Here, in a blatant attempt to  
27 circumvent the page limitation for opposition papers, instead of opposing Defendant's  
28 summary judgment regarding the failure to warn, Plaintiffs provide the following:

1 “Plaintiffs’ evidence supporting Plaintiffs’ failure to warn claim is set forth in the  
2 declaration of Glen Stevick.” Additionally, Plaintiffs violate this Court’s standing  
3 order that “[e]vidence submitted in support of or in opposition to a motion for  
4 summary judgment . . . should not be attached to the memorandum of points and  
5 authorities.” (Scheduling and Case Management Order 7–8, ECF No. 14.) If the page  
6 limit was insufficient, Plaintiffs could have filed a request for leave to exceed the page  
7 limit, which they did not do. Plaintiffs, effectively, did not set forth any evidence in  
8 their Opposition opposing summary judgment on this issue. Nevertheless, even after  
9 reviewing the declaration of Glen Stevick, the Court finds that there are no material  
10 disputes of fact to preclude partial summary judgment on this issue.

11 In support of its Motion for Summary Judgment, PVA argues that the warnings  
12 that came with the PVA 350 “explicitly warned users (1) never to bypass, disable or  
13 tamper with this feature and (2) that while the materials used in the machine could be  
14 hazardous, those materials came with MSDS sheets that specified known dangers and  
15 toxicity.” (MSJ 22.) These facts are undisputed, and Plaintiffs only dispute these  
16 facts “to the extent that Defendant infers that Mr. Juarez saw the manual.” (PSMF  
17 13–16.) As such, the undisputed facts show that the warnings that came with the PVA  
18 manual appear to be adequate.

19 Additionally, as a separate reason for granting partial summary judgment on  
20 this issue, PVA established that there is no genuine dispute of material fact regarding  
21 the warning being the cause of Plaintiffs’ injuries. In *Ramirez v. Plough, Inc.*, the  
22 court held that as a result of the plaintiff’s failure to read and/or obtain a translation of  
23 a product labeling, “there is no conceivable causal connection between the  
24 representations or omissions that accompanied the product and plaintiff’s injury.” 6  
25 Cal. 4th 539, 555–56 (1993). Here, Plaintiffs’ only argument is that “the company  
26 inadequately trained Mr. Juarez on how to utilize the machine without providing a  
27 sufficient warning.” (Opp’n to MSJ (“Opp’n”) 20, ECF No. 63.) However,  
28 Defendant’s training of Juarez is a separate issue from whether Juarez read the

1 warnings. It is undisputed that warnings were provided in the PVA 350's manual in at  
2 least an electronic format and that Juarez never read these warnings. As Juarez never  
3 read the warning labels, the adequacy of the warning labels is immaterial because  
4 Plaintiffs' injuries would have occurred even if Defendant issued adequate warnings.  
5 *See Mariscal v. Graco, Inc.*, 52 F. Supp. 3d 973, 989 (N.D. Cal. 2014) (stating "that a  
6 defendant is not liable to a plaintiff if the injury would have occurred even if the  
7 defendant had issued adequate warnings") (citing *Huitt v. S. Cal. Gas Co.*, 188 Cal.  
8 App. 4th 1586, 1604 (2014)) (internal quotation marks omitted).

9 Accordingly, partial summary judgment is granted on Plaintiffs' strict products  
10 liability failure to warn claim.

### 11 **C. Strict Product Liability – Design Defect**

12 Defendant also moves for partial summary judgment on Plaintiffs' strict  
13 products liability design defect claim. Specifically, Defendant argues that partial  
14 summary judgment should be granted because "[Defendant] did not manufacture, sell,  
15 supply, or specify the Arathane and Humiseal materials" to be used with the PVA 350.

16 "[A] product may be found defective in design, so as to subject a manufacturer  
17 to strict liability for resulting injuries, under either of two alternative tests." *Barker v.*  
18 *Lull Engineering Co.*, 20 Cal. 3d 413, 432 (1978). First, under the "consumer  
19 expectations test," a product may be defective in design if the "product failed to  
20 perform as safely as an ordinary consumer would expect when used in an intended or  
21 reasonably foreseeable manner." *Id.* Second, and alternatively, under the "risk-  
22 benefit test," a product may be defective in design "if the plaintiff demonstrates that  
23 the product's design proximately caused his injury and the defendant fails to establish  
24 . . . the benefits of the challenged design outweigh the risk of danger inherent in such  
25 design." *Id.*

26 Defendant also attempts to argue that "[s]trict liability is prohibited even when  
27 it is 'foreseeable that the products will be used together,' unless such use is actually  
28 necessary." (MSJ 24 (citing *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 361 (2012)).)

1 However, Defendant’s citation is misleading as it omits the prefatory clause. *O’Neil*  
2 specifically held: “California law does not impose a *duty to warn* about dangers  
3 arising entirely from another manufacturer’s product, even if it is foreseeable that the  
4 products will be used together.” *O’Neil*, 53 Cal. 4th at 361 (emphasis added).  
5 Although Defendant may not have had a duty to warn about dangers arising from  
6 another manufacturer’s product, Defendant may still be liable if Plaintiffs’ injury  
7 results from a reasonably foreseeable use of the product or under the risk benefit test.  
8 *See Pooshs v. Phillip Morris USA, Inc.*, 904 F. Supp. 2d 1009, 1024 (N.D. Cal. 2012).

9 Here, there is a genuine dispute of material fact regarding whether the PVA 350  
10 failed to perform as safely as an ordinary consumer would expect when used in an  
11 intended or reasonably foreseeable manner. Specifically, Plaintiffs have set forth  
12 evidence that Defendant was aware of the chemicals that were being used with the  
13 PVA 350, and perhaps even encouraged the use of certain chemicals, suggesting that  
14 the use of Arathane and Humiseal materials were reasonably foreseeable. (PSMF 30.)  
15 There is also a genuine dispute of material fact regarding whether the PVA 350’s  
16 design proximately caused Plaintiffs’ injuries, and Defendant has not set forth any  
17 facts regarding whether the benefits of the challenged design outweigh the risk of  
18 danger inherent in such design. Specifically, Plaintiffs have set forth evidence that  
19 Defendant trained Juarez to bypass certain safety mechanisms on the PVA 350, that in  
20 order to program the PVA 350, Juarez was trained by Defendant to have the door to  
21 the PVA 350 open so Juarez could see what area the PVA 350 was spraying, and the  
22 PVA 350 was designed in such a way that a mask could not be worn when observing  
23 the area that the PVA 350 was spraying. (PSMF 10.)<sup>3</sup> As Plaintiffs have made a  
24 prima facie showing that their injuries were proximately caused by the PVA 350’s  
25 design, the burden shifts to Defendant to prove that the benefits of the challenged  
26 design outweigh the risk of danger inherent in such a design. *Perez v. VAS S.p.A*, 188

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<sup>3</sup> This list is not exhaustive of the disputed facts in support of Plaintiffs’ design defect claim.

1 Cal. App. 4th 658, 677–78 (2010). However, Defendants have not rebutted any of  
2 Plaintiffs’ evidence regarding the PVA 350’s alleged design defects.

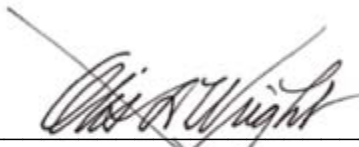
3 Accordingly, Plaintiffs have presented sufficient evidence that a reasonable jury  
4 could conclude that the PVA 350’s design was a substantial factor in causing  
5 Plaintiffs’ injuries.

6 **VI. CONCLUSION**

7 For the foregoing reasons, the Court **GRANTS** Defendant’s motion for partial  
8 summary on Plaintiff’s strict products liability failure to warn claim and **DENIES**  
9 Defendant’s motion for summary judgment on the remaining issues.

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11 **IT IS SO ORDERED.**

12 December 27, 2018

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16 **OTIS D. WRIGHT, II**  
17 **UNITED STATES DISTRICT JUDGE**  
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